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No. 5039

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United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff in Error,
vs.
ASH SHEEP COMPANY, a Corporation,
Defendant in Error.

Transcript of Record

Upon Appeal from the United States District
Court for the District of Montana.

FILED

OCT 11 1917

F. D. MONCKTON,
CLERK.

No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

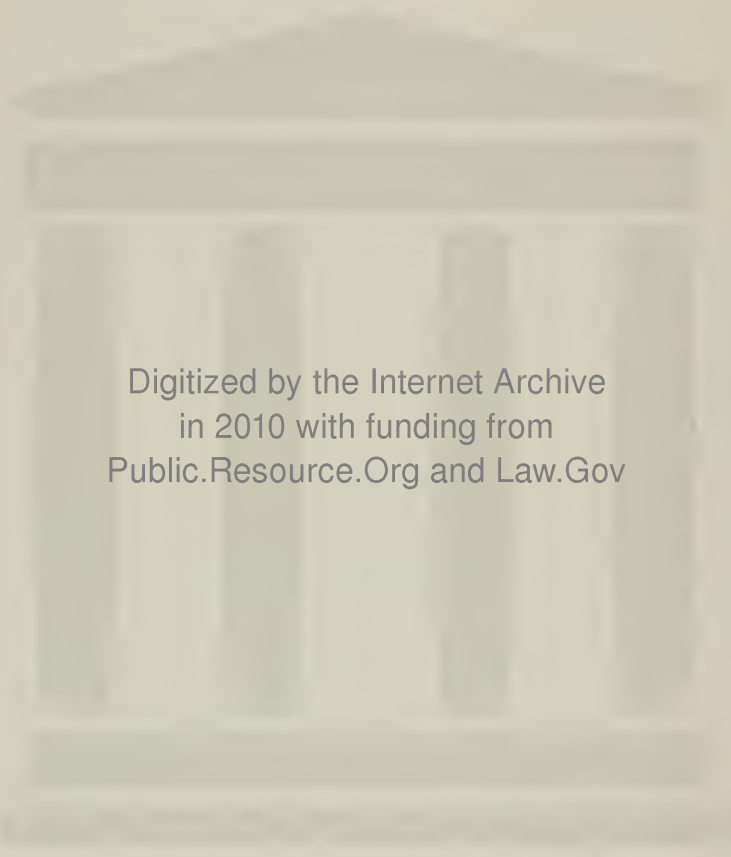
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Names and Addresses of Attorneys of Record

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JAMES H. BALDWIN, Assistant U. S. Attorney,
Butte, Montana.

HOMER G. MURPHY, Assistant U. S. Attorney,
Helena, Montana.

Attorneys for Plaintiff in Error.

C. B. NOLAN and WILLIAM SCALLON, Helena,
Montana.

Attorneys for Defendant in Error.

*In the District Court of the United States for the
District of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

No. 506

BE IT REMEMBERED, that on the 3rd day of
May, 1916, the United States of America filed its
complaint herein, which said complaint is in the
words and figures following, to-wit:

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Complaint.

The plaintiff complains of the defendant and for cause of action alleges:

I.

That the said defendant, Ash Sheep Company, now is, and at all of the times hereinafter mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Billings, Montana, and as such corporation has been and now is engaged in the buying and selling of sheep and other livestock in the state and district of Montana, and in carrying on and conducting all such business and operations as are necessarily incident to and connected with the buying and selling sheep and other livestock in the state and district of Montana.

II.

That on or about the 12th day of August, 1868, the plaintiff and the Crow tribe of Indians entered into, concluded and there was promulgated a treaty by which the United States of America set aside for the occupancy, use and benefit of said Crow tribe of Indians certain lands included within the boundaries of that certain reservation within the state and district of Montana which has since been and is now known and designated as the Crow Indian Reservation.

III.

That during all of the times hereinafter men-

tioned the plaintiff was and now is the owner of and entitled to the possession of all those certain tracts of land situate, lying and being within the original boundaries of the Crow Indian Reservation, and a part thereof, in the state and district of Montana, and described as follows, to wit: Section twenty-seven (27), township two (2) north, range thirty-six (36) east; section twelve (12) township one (1) north, range thirty-six (36) east; sections six (6) and seven (7), township four (4) north, range thirty-six (36) east, Montana principal meridian.

IV.

That the lands hereinbefore described are a part of the lands included within the boundaries of the said Crow Indian Reservation opened to settlement and entry by the Act of the Congress of the United States entitled "An Act to ratify and amend an agreement with the Indians of Crow Indian Reservation, in Montana, and making appropriation to carry the same into effect," approved April 27th, 1904, (33 Stat. L. 352), and that said lands, and all thereof, were at all of the times hereinafter mentioned, vacant lands upon which no settlements, entries or allotments of any kind had been made, and that the Indian title to the same had not been extinguished.

V.

That on or about the 14th day of July, 1913, the exact date thereof being now unknown to plaintiff and for that reason not more definitely

alleged, the defendant, Ash Sheep Company, in violation of the provisions of section 2117 of the Revised Statutes of the United States, and without the consent or permission of the Crow tribe of Indians, or of the United States, drove, ranged, fed and grazed, and caused to be driven, ranged, fed and grazed upon the tracts of land hereinbefore described, and upon other vacant lands included within the boundaries of said Crow Indian Reservation and opened to settlement and entry by the aforesaid Act of April 27th, 1904, a more particular description of said lands being at this time to plaintiff unknown, a large number of sheep, to-wit, about seven thousand one hundred (7,100) head, and which seven thousand one hundred (7,100) head of sheep were thereafter, for a long period of time, by the said defendant, Ash Sheep Company, ranged, fed and grazed upon said lands.

VI.

That under the provisions of section 2117 Revised Statutes of the United States the plaintiff is entitled to recover from the said defendant Ash Sheep Company, for the use and benefit of said Crow tribe of Indians, a penalty of one dollar for each of said seven thousand one hundred (7,100) head of sheep, so driven, ranged, fed and grazed upon the said lands by said defendant, Ash Sheep Company, as hereinbefore set forth, and amounting in all to the sum of seven thousand one hundred dollars (\$7,100).

WHEREFORE plaintiff prays judgment

against said defendant Ash Sheep Company for the sum of seven thousand one hundred dollars (\$7,100), as a penalty as hereinbefore set forth, and for costs of suit herein expended.

B. K. WHEELER,

United States Attorney District of Montana.

HOMER G. MURPHY,

FRANK WOODY,

Assistant U. S. Attorney District of Montana.

United States of America,

District of Montana,—ss.

Frank Woody, being first duly sworn according to law, deposes and says, that he is a duly appointed, qualified and acting Assistant United States Attorney for the district of Montana; that he has read the foregoing complaint and knows the contents thereof, and that the matters and facts therein stated are true to the best of his knowledge, information and belief.

FRANK WOODY.

Subscribed and sworn to before me this 3rd day of May, 1916.

GEO. W. SPROULE,

Clerk U. S. District Court, District of Montana.

By HARRY H. WALKER,

Deputy.

[Indorsed]: Title of Court and Cause. Complaint. Filed May 3, 1916. Geo. W. Sproule, Clerk, by Harry H. Walker, Deputy.

And thereafter, to-wit, on the 3rd day of May, 1916, summons was duly issued herein, and there-

after duly served upon the defendant, said summons and return thereon being in the words and figures following, to-wit:

UNITED STATES OF AMERICA.

*District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant,

Action brought in the said District Court and the complaint filed in the office of the Clerk of said District Court in the City of Helena, County of Lewis and Clark.

The President of the United States of America,
Greeting: To the Above Named Defendant, Ash Sheep Company, a Corporation.

You are hereby summoned to answer the complaint in this action which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the Plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

WITNESS, the Honorable GEO. M. BOURQUIN,
Judge of the United States District Court, District of Montana this 3rd day of May in the year of our

Lord one thousand nine hundred and 16 and of our Independence the 140.

[Seal]

GEO. W. SPROULE,

Clerk.

By HARRY H. WALKER,

Deputy Clerk.

United States Marshal's Office,
District of Montana.

I HEREBY CERTIFY, that I received the within summons on the 4th day of May, 1916, and personally served the same on the 5th day of May, 1916, on the Ash Sheep Company by delivery to, and leaving with Christian Yegen, President of said defendants named therein personally, at Billings, County of Yellowstone, in said district, a certified copy thereof, together with a copy of the Complaint, certified to by Geo. W. Sproule attached thereto.

Dated this 6th day of May, 1916.

JOS. L. ASBRIDGE,

U. S. Marshal.

By A. G. SATHRE,

Deputy.

[Indorsed]: Title of Court and Cause. Summons. B. K. Wheeler, U. S. Atty., Butte, Montana, Plaintiff's Attorney. Filed May 6th, 1916. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy Clerk.

And thereafter, to-wit, on May 25th, 1916, defendant served and filed its demurrer to said com-

plaint herein, which is in the words and figures following, to-wit:

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Demurrer.

Now comes the defendant and demurs to the plaintiff's complaint, and for cause of demurrer says. that said complaint does not state facts sufficient to constitute a cause of action.

C. B. NOLAN,

WM. SCALLON,

Attorneys for Defendant.

[Indorsed]: Title of Court and Cause. Demurrer. Filed May 25, 1916. Geo. W. Sproule, Clerk.

And thereafter, to-wit, on June 15th, 1916, the court made and entered herein its order in words and figures following, to-wit:

*In the District Court of the United States in and for
the District of Montana.*

NO. 506,

UNITED STATES vs. ASH SHEEP CO.

On motion of C. B. Nolan, Esq., it is ordered that defendant may withdraw its demurrer herein and file an answer. Thereupon answer was filed.

Entered in open court June 15, 1916.

GEO. W. SPROULE, Clerk.

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Answer.

Now comes the defendant above named, and for answer to plaintiff's complaint, admits, alleges, and denies as follows:

I.

Admits the allegations of paragraph I, except that it denies that it is now engaged in the business alleged, or in any business whatsoever.

II.

Admits the allegations of paragraphs II, III and IV, except that as to the allegations of paragraph IV, that the Indian title to the lands had not been extinguished, and as to that allegation, defendant has no knowledge or information sufficient to form a belief and denies the same.

III.

Denies the allegations of paragraph V, except as hereinafter qualified.

IV.

Denies the allegations of paragraph VI.

FURTHER ANSWERING SAID COMPLAINT,
DEFENDANT ALLEGES:

I.

That at the time stated in plaintiff's complaint, the defendant, Ash Sheep Company, was engaged in the sheep business, and at said time owned and ran several bands of sheep, and at the time stated owned approximately the number of head of sheep stated in plaintiff's complaint, and that the sheep so owned by it were in separate bands, and were run and handled by sheep herders in its employ.

II.

That the lands mentioned in paragraphs III and V of plaintiff's complaint were originally within the Crow Indian Reservation and were lands to which the Act of Congress, mentioned in paragraph IV of plaintiff's complaint applied.

III.

That pursuant to the said Act of Congress, to which reference is made in plaintiff's complaint, and pursuant to the proclamation of the President of the United States made and issued in conformity with said Act of Congress, certain of the lands so ceded and affected by said Act of Congress and by said proclamation were settled on by settlers, and title thereto acquired by said settlers, and that the settlements so made were promiscuously scattered over the entire tract of land so ceded as aforesaid, and that such lands so settled on were in the private ownership of said settlers, or their

grantees at the time mentioned in plaintiff's complaint.

IV.

That on the 14th day of July, 1913, and for a long time prior thereto and subsequent thereto, this answering defendant owned in said ceded strip, large tracts of land, of the title to which, the United States had been divested, and, likewise, at said time was entitled to the use of large tracts of land in said ceded strip as lessee from those to whom title had passed from the United States, pursuant to law, providing for the settlement on said strip, and the disposal of same, and that the said lands so owned and leased by it consisted of several thousand acres in separate tracts and bodies, and the said lands so owned and leased by it were in close proximity to the lands mentioned in paragraphs III and V of plaintiff's complaint, and on said lands so owned and leased by it, it herded and grazed some of the sheep owned by it.

V.

Defendant further avers that in getting its sheep onto those lands so leased and owned by it and onto its said holdings, between three and four thousand head of its sheep were driven across the lands described in plaintiff's complaint for the purpose of being taken to the lands owned and leased by it, as aforesaid, and in being thus driven, the said sheep grazed upon the lands mentioned in plaintiff's complaint, and in that connection, defendant alleges that the lands mentioned in

plaintiff's complaint were so situate with reference to the lands owned and leased by it, as aforesaid, it would be impossible for the defendant to use its said lands, and it would be impossible for it to herd its sheep on its own holdings, as aforesaid, without such sheep being driven to and across some of the lands mentioned in plaintiff's complaint.

AND FOR A FURTHER DEFENSE TO PLAINTIFF'S COMPLAINT, DEFENDANT ALLEGES:

I.

That on the 11th day of August, 1913, the plaintiff filed its complaint in the above entitled court against the defendant, copy of which complaint is hereto attached, marked Exhibit "A," and made a part hereof;

II.

That on the 25th day of August, 1913, the defendant filed its Answer to said complaint, copy of which Answer is hereto attached, marked exhibit B and made a part hereof.

III.

That the relief prayed for by said plaintiff in said action is the same relief that is prayed for in the present action; that the wrong complained of in said action is the wrong complained of in the present action; that the damage item of seventy-one hundred dollars (\$7100.00), sought to be recovered in said action is the penalty which plaintiff is now seeking to enforce in the present action.

IV.

Defendant further avers that issue was joined in said action, and such proceedings were thereafter had therein that said cause came on for trial in the above entitled court, and the said cause was tried in said court upon the 17th day of December, 1913, to the judge of said court without a jury, and it was considered by said court in said action as to whether or not the plaintiff was entitled to recover the penalty which it is now seeking to recover in the present action; that the said cause was submitted to said court for the determination, and in said cause conclusions of law were made by said court, a copy of which conclusions of law is hereto attached marked Exhibit "C" and made a part of this answer.

V.

That thereafter, on, to-wit, the 10th day of February, 1916, a judgment and decree was duly made and entered in said action, copy of which said judgment and decree is hereto attached, marked Exhibit "D" and made a part hereof.

VI.

That said judgment still remains in full force and effect and stands unappealed from.

VII.

Defendant further alleges that plaintiff having instituted said action, and having sought to recover damages in said action, it elected to secure the relief which it was entitled to on account of the trespass complained of, which is the trespass

complained of in the present action, and having so elected to recover the damages which is sought to recover in said action, and having recovered damages for said trespass in said action, it ought now to be estopped from maintaining the present action.

WHEREFORE, defendant prays for judgment in its favor and for the dismissal of the complaint herein, and for costs of suit.

C. B. NOLAN,
WM. SCALLON,

Attorneys for Defendant.

State of Montana,
County of Lewis and Clark,—ss.

C. B. Nolan being first duly sworn upon oath, deposes and says: That he is one of the attorneys for the defendant named in the foregoing entitled action; that he has read the foregoing Answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief;

That affiant makes this affidavit and verification for and on behalf of said defendant, for the reason that said defendant is a corporation, and none of the officers of said defendant are within the County of Lewis and Clark, State of Montana, where affiant now is and resides and where this affidavit is made.

C. B. NOLAN.

Subscribed and sworn to before me this 3rd day of June, 1916.

[Notary Seal]

— J. R. WINE, Jr.,

Notary Public for the State of Montana; Residing
at Helena, Montana. My Commission Expires
Nov. 17, 1917.

EXHIBIT "A."

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Bill of Complaint

To the Judge of the District Court of the United
States, District of Montana:

The United States of America, by James W. Freeman, United States Attorney for the District of Montana, under authority and by the direction of the Attorney General, brings this bill of complaint against the Ash Sheep Company, a corporation organized and existing under and by virtue of the laws of the State of Montana, and by reason thereof a citizen and resident of said State and District of Montana; and thereupon shows unto your Honor:

1. That the said defendant, the Ash Sheep Company, at all the times hereinafter mentioned, has been and now is a corporation organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Billings, Montana, and as such corporation has been and now is engaged in the buying and

selling of sheep and other livestock in the State and District of Montana, and carrying on and conducting all such business and operations as are necessarily incident to the buying and selling of sheep in the State and District of Montana.

2. That on or about the 12th day of August, 1868, this complainant and the Crow tribe of Indians entered into, concluded and then and there was promulgated a treaty by which the United States of America set aside for the use and benefit of the said Crow tribe of Indians that certain reservation within the State and District of Montana, which has since been and now is known as the Crow Indian Reservation.

3. That during all of the times hereinafter mentioned this complainant was and now is the owner and lawfully entitled to the possession of all those certain tracts of land situate, lying and being within the original boundaries of the Crow Indian Reservation and a part thereof, in the State and District of Montana, and described as follows: Section twenty-seven (27), township two (2) north, range thirty-six (36) east; section twelve (12), township one (1) north, range thirty-six (36) east; sections six (6) and seven (7), township four (4) north, range thirty-six (36) east of Montana principal meridian. That all of said lands are reserved lands and a part of the lands reserved and set aside by the said United States for the use and benefit of the said tribe of Crow Indians, in said State and District of Montana.

4. That the lands hereinabove described are a part of the vacant ceded Indian lands of the said Crow tribe of Indians and that the Indian title to the same has not been extinguished and that said lands are subject to the rules and regulations made and promulgated by the Secretary of the Interior of the United States concerning Indian lands that have been opened for settlement and entry, dated November 27, 1911, and the Act of Congress of the United States approved April 27th, 1904 (33 statutes at Large, page 352), entitled "An Act to ratify and amend an agreement with the Indians of Crow Indian Reservation in Montana, and making appropriation to carry the same into effect.

5. That on or about the 14th day of July, 1913, the exact date thereof being now unknown to complainant and for that reason not more definitely alleged, and ever since said date, this defendant, the Ash Sheep Company, in violation of the rules and regulations of the Secretary of the Interior of the United States and said Act of Congress aforesaid, grazed and caused to be grazed upon the tracts of land hereinabove described, and other vacant ceded Indian lands reserved for the use and benefit of said Indians, and subject to the rules and regulations and Act of Congress hereinabove referred to, a more particular description of said lands is now to complainant unknown, a large number of sheep, to-wit, about seven thousand one hundred (7,100) head; that the said sheep are being grazed, and are now trespassing in and upon

the respective tracts of land hereinabove described; that the defendant company, acting by and through its agents, servants and employees, has not obtained authority or any permit whatsoever to graze and cause to be grazed said sheep in and upon the land hereinabove specifically described, as provided by the rules and regulations of the Department of the Interior of the United States, or any other officials of the complainant thereunto duly authorized.

6. And complainant further avers that grazing permits have been duly and regularly issued by its duly authorized agents to certain persons authorizing and permitting said persons to graze their stock, to wit, horses and cattle, upon all of the lands hereinabove described; that said persons to whom permits have been issued have complied with all the rules and regulations made and promulgated by the Secretary of the Interior in that regard and have paid all fees required thereunder.

7. Complainant further avers that the said defendant, the Ash Sheep Company, acting through its officers, agents, servants and employees, are now grazing and will continue to graze said seven thousand one hundred head of sheep in and upon the lands hereinabove referred to unless restrained by this court; that such action on the part of said defendant company and its agents, servants and employees constitutes a continuing trespass and will materially injure and destroy the use and value of said lands and cause irreparable

damage to this complainant, and deprive the Crow Indians of the benefits thereof; and that unless restrained by this Honorable Court the defendant, in defiance of the express mandate of the law so enacted by the Congress of the United States, will continue to graze said seven thousand one hundred head of sheep without due and lawful authority therefor first had and obtained, and said defendant now claims to have the right to so maintain said sheep in and upon said lands so held by the United States of America for the use and benefit of the Crow Indian nation, and will thereby prevent and prohibit the United States from asserting any right whatsoever in said lands.

8. That the said defendant, the Ash Sheep Company, in all of its operations hereinbefore described, has been and will act through divers of its officers, agents and employees; that the names of said officers, agents, servants and employees are to this complainant unknown and for that reason they are not made parties to this cause in their own individual names. Complainant avers, however, that unless such officers, agents, servants and employees of the said defendant are likewise restrained by an order of this Court, they will continue to trespass upon said lands, as aforesaid, and this complainant will, when the names of said officers, agents, servants and employees shall be ascertained, ask this Honorable Court permission to enjoin said officers, agents, servants and employees as party defendants in this cause. That

in consequence of the said acts of defendant company, complainant and the said Crow Indians herein have been and are being deprived of the benefit of said lands and premises, and complainant alleges that by reason thereof the said Crow Indians and this complainant as hereinbefore set forth have sustained damages in the sum of seven thousand one hundred dollars (\$7,100).

All of which actions, doings and pretenses of the said defendant and its said officers, agents, servants and employees are contrary to equity and good conscience and tend to the manifest injury and oppression of complainant in the premises

WHEREFORE, forasmuch as complainant is remediless in the premises according to the strict rule of common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable;

To the end, therefore, that said defendant, the Ash Sheep Company, may full, true, direct and perfect answer make to all and singular the matters and things hereinbefore stated and charged, but not on oath (its answer on oath being hereby expressly waived), as fully and particularly as if the same were here repeated and it thereunto distinctly interrogated; that the said defendant, the Ash Sheep Company and its officers, agents, servants and employees, during the progress of this cause and thereafter finally and perpetually may be enjoined from so grazing said seven thousand

one hundred head of sheep on and upon said lands so described, and from occupying, using and trespassing on and upon said lands without having first obtained due and proper permission or authority from the Secretary of the Interior of the United States of America, and that the said defendant, its officers, and agents, be enjoined from employing or contracting with any individual, individuals, corporation or corporations not connected with or in the employ of said defendant from continuing the trespass hereinabove complained of, and from entering upon or going on the said lands, and that the said complainant may have and recover from said defendant the sum of seven thousand one hundred dollars (\$7,100) damages; and that the said complainant may have such other and further relief in the premises as may be considered just in this Honorable Court and agreeable to equity and good conscience.

May it please your Honor to grant unto this complainant a writ of subpoena of the United States of America, issued by and under the seal of this Honorable Court directed to the said defendant, the Ash Sheep Company, thereby commanding it at a certain time and under a certain penalty therein to be limited to appear before this Honorable Court and then and there full, true and direct answer make to all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made

against it in the premises, as shall seem fit and meet and agreeable to equity.

JAMES W. FREEMAN,

United States Attorney, District of Montana.
United States of America,
District of Montana,—ss.

James W. Freeman, being first duly sworn, deposes and says: That he is the duly appointed, qualified and acting United States Attorney for the district of Montana; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and things therein contained are true to the best of his knowledge, information and belief.

JAMES W. FREEMAN,.

Subscribed and sworn to before me this 11th day of August, A. D. 1913.

[Seal]

GEO. W. SPROULE,

Clerk.

EXHIBIT "B."

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

ASH SHEEP COMPANY,

Defendant.

Answer.

Now comes the defendant and for answer to complainant's bill of complaint:

I.

Admits the allegations of paragraphs one and two.

II.

Admits the allegations of paragraph three, except that it denies that the lands referred to in said paragraph are reserve lands, and denies that the said lands are set aside by the United States for the use and benefit of the Crow Indians. In that connection, it alleges that the lands in question were ceded to the United States by the said tribe, and that said lands are a portion of the public domain of the United States; the said tribe having no claim thereto, except that the proceeds from the disposition of said lands, to the extent provided for in the treaty and act of Congress providing for their cession shall be turned over to said tribe.

III.

Answering the allegations of paragraph four, admits that the lands referred to in said paragraph were part of the said Indian lands, but denies that the Indian title has not been extinguished, and denies that the said lands are subject to the rules and regulations made and promulgated by the Secretary of the Interior, in so far as the rules and regulations referred to provide that permits to said lands shall be granted for rentals provided, and the rentals so provided turned over to the Crow Indians. In that connection defendant alleges that said lands are public lands of the United

States and that the Indian title to same has been extinguished.

IV.

Answering the allegations of paragraph five, admits that sheep belonging to defendant, to the number specified in the bill of complaint, graze on the tracts of land described, but denies that the lands upon which they graze were reserved for the use and benefit of the Indians, and denies that the use of said lands is subject to the rules and regulations of the Indian Department, and denies that so grazing any trespass was committed.

Admits, however, that no permit to graze said sheep on said land, pursuant to the rules and regulations of the Interior Department was obtained. In that connection, however, defendant alleges that the lands in question were public lands of the United States, and that pursuant to the policy of the Government of the United States, as to the free use of public lands for grazing and pasturage purposes, defendant a citizen of the United States, owning the sheep in question, asserted its right under that privilege and policy, and grazed its sheep on said lands.

V.

Answering the allegations of paragraph six, defendant has no knowledge or information sufficient to form a belief.

VI.

Answering the allegations of paragraph seven, admits that it is grazing its sheep, and will con-

tinue so to do on said land, unless restrained from doing so.

Denies that its doing so is a trespass, and denies that the grazing of said sheep will materially or at all destroy the value of said lands.

Denies that its grazing said sheep in the manner herein set forth is in violation of the law, and admits that it claims to have the right to graze said sheep upon the said lands.

Denies that its grazing its sheep on said lands is in violation of any right of ownership in the United States of America, and, in that connection, avers that its grazing its sheep on said lands is in accordance with the express wish and policy of the Government of the United States, as to the use of public lands, including the land in question.

VII.

Answering the allegations of paragraph eight, admits that it will continue to use said land for grazing purposes, unless restrained from doing so, and admits that its officers and agents, in the handling of said sheep will likewise do so, unless restrained.

Denies that in consequence of the acts of defendant, complainant or the Crow Indians have been deprived of the benefit of said lands, and denies that by reason of the acts charged, or of any other acts, the Crow Indians and the complainant, or either of them, have or will sustain damage in the sum of seven thousand one hundred dollars, or any other sum or amount.

Denies that the acts charged in the complaint are contrary to equity and good conscience, or either, or tend to the manifest injury of the complainant.

Further replying to said paragraph, denies that complainant is without remedy at law, and denies that relief is obtainable only in equity.

Further answering said bill of complaint, defendant alleges that in the bill of complaint there are set forth two causes of action which cannot be joined, to wit, a cause of action in equity asking for injunctive relief on account of trespasses alleged to have been committed, and a cause of action for the enforcement of a penalty, pursuant to the provisions of Section 2117 of the Revised Statutes of the United States, and that by reason thereof in the bill of complaint in question there is a misjoinder of causes of action.

Further answering said complaint and that portion of same where damages are sought for the sum of seven thousand one hundred dollars, defendant avers that the claim for damages in question is made pursuant to the provisions of Section 2117 of the Revised Statutes of the United States, and as such, is a claim based on the enforcement of a penalty, and as such, is a claim that cannot be enforced in equity.

WHEREFORE, having answered complainant's bill of complaint, defendant prays that complainant's bill be dismissed, and that it be awarded its

costs in this behalf expended.

C. B. NOLAN,
WM. SCALLON,
Solicitors for Defendant.

EXHIBIT "C."

United States District Court, Montana.

UNITED STATES

vs.

ASH SHEEP CO.

— This is a suit to enjoin defendant from grazing sheep on lands now determined to be Indian lands held in trust by plaintiff. (221 Fed. 587), and for damages.

Plaintiff contends that it is entitled to recover one dollar per head of sheep grazed, by virtue of Sec. 2117 R. S., which provides that any one who drives any "stock of horses, mules or cattle, to range and feed on any land belonging to an Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of one dollar for each animal of such stock." This is impossible for several reasons:

First, the statute contemplates lands so far in Indian occupancy and control that grazing will be an injury to the Indians and to which they may consent. The lands involved are otherwise.

Second, the penalty expressly attaches to "horses, mules or cattle" and sheep are not thereby included. It is apparent that Congress had in mind the particular and limited definition of the word "cattle"—animals of the bovine genus—and

not the general and extended meaning—all animals of domestic kind. Otherwise, horses and mules would not have been specially mentioned, or would have been so mentioned as to indicate but enumeration of particulars of a general class following.

To illustrate, "horses, mules or *any other* cattle." For horses and mules are within the general meaning of "cattle," even as sheep, swine, etc., are. Examination of the Acts of Congress, and especially Indian legislation, makes manifest that Congress practically invariably uses the word "cattle" in the limited sense of bovine animals, and for general inclusion makes use of the words "stock," "useful domestic animals," and "livestock." In the earliest legislation to penalize grazing Indian lands, the prohibition was of "horses or cattle," and the same act provided that the Indians would be supplied with "useful domestic animals." 1. Stat. 747. Range animals were intended, and sheep were not then ranged. *U. S. vs. Mattock*, Fed. Case 15744 is to the contrary, but seems to lay too much stress upon the mischief intended to be remedied. A case is not within a penal statute though within the mischief of, unless also within the legislative intent as disclosed by the language used. It would seem Congress had in mind only the three classes of range animals, horses, mules and bovines, and fixed a proportionate penalty for punishment and not for confiscation as it often would be if applied to sheep or swine.

Third, if the complaint is sufficient for penalties, equity never aids the collection of statutory penalties. True, equity having jurisdiction retains it for full relief. But this for remedial and not punitive purposes. Here, for injunction and compensatory damages, and not for punishment of which are penalties.

Fourth, the appellate tribunal remanded the suit "with directions to enter judgment for the complaint for the injunction prayed for and for such damages as the court may find complainant entitled to."

That is the law of the case.

There is no evidence of substantial damages and for the technical trespass nominal damages are awarded.

Decree will be entered for an injunction, one dollar damages and costs.

BOURQUIN, J.

EXHIBIT "D."

*District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Decree.

This cause came on regularly to be heard on the 31st day of January, 1916, upon the motion of the complainant for judgment on the mandate of

the United States Circuit Court of Appeals for the Ninth Circuit, and upon the pleadings on file in said cause, and was by counsel for complainant and defendant submitted to the court and by the court taken under advisement;

And by it appearing to the court, and the court finds, as appears by its decision and memo filed herein and being hereof made a part, that the complainant is entitled to a perpetual injunction against the defendant, as prayed for in the bill of complaint, together with a judgment for the sum of one dollar nominal damages and costs of suit; and upon consideration thereof, and the court being fully advised in the premises;

IT IS ORDERED, ADJUDGED AND DECREED that the said defendant, and its officers, agents, servants, attorneys and employes be, and they are hereby perpetually enjoined and restrained from grazing the sheep of said defendant upon the lands, or any thereof, particularly mentioned and described in the plaintiff's bill of complaint;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said complainant have and recover of and from the defendant the sum of one dollar damages and its costs and disbursements incurred in said action taxed in the sum ofDollars.

Done in Open Court this 10th day of February, 1916.

GEO. M. BOURQUIN, Judge.

(Earlwood) Title of Court and Cause
 Answer. Filed June 15, 1916
 Geo. Sprague
 Clerk

And thereafter, on July 12th, 1916, plaintiff served and filed herein its demurrer to the answer of said defendant, which demurrer to said answer is in the words and figures following, to-wit:

*In the United States District Court, District of
Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Demurrer to Answer.

Now comes the plaintiff and demurs to the first defense set forth and contained in the defendant's answer, and for grounds of demurrer says:

I.

That the same does not state facts sufficient to constitute a defense to the cause of action set forth and contained in plaintiff's complaint.

And the plaintiff demurs to the first further defense and answer set forth and contained in the defendant's answer, and for grounds of demurrer says:

I.

That the same does not state facts sufficient to constitute a defense to the cause of action set forth and contained in plaintiff's complaint.

II.

That the same is insufficient in law upon the face thereof.

And the plaintiff demurs to the second further

defense set forth and contained in the defendant's answer, and for grounds of demurrer says:

I.

That the same does not state facts sufficient to constitute a defense to the cause of action set forth and contained in plaintiff's complaint.

II.

That the same is insufficient in law upon the face thereof.

B. K. WHEELER,
United States Attorney.
HOMER G. MURPHY,
FRANK WOODY,
Asst. U. S. Attorneys.

Service of the within and foregoing demurrer accepted and receipt of copy thereof acknowledged this 12th day of July, 1916.

C. B. NOLAN,
WM. SCALLON,
Attorneys for Defendant.

[Indorsed]: Title of Court and Cause. Demurrer to Answer. Filed July 12, 1916. Geo. W. Sproule, Clerk.

And, thereafter, on July 17, 1916, said demurrer coming on regularly to be heard by the court the same was by the court overruled and the court made and entered herein its order which is in the words and figures following, to-wit:

*In the District Court of the United States in and
for the District of Montana.*

NO. 506.

UNITED STATES

vs.

ASH SHEEP CO.

This cause came on regularly for hearing at this time upon demurrer to the answer, H. G. Murphy, Esq., Asst. U. S. Attorney, appearing on behalf of the United States, and C. B. Nolan, Esq., on behalf of the defendants; and thereupon demurrer submitted, and, after due consideration, it is ordered that the said demurrer be and the same hereby is overruled and plaintiff granted 5 days within which to file reply herein.

Entered in open court July 17, 1916.

GEO. W. SPROULE, Clerk.

And, thereafter, on July 20th, 1916, said plaintiff duly served and filed herein its reply to the said answer of said defendant, which reply is in words and figures following, to-wit:

*In the District Court of the United States. District
of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Reply.

Now comes the plaintiff and for reply to the de-

defendant's answer filed herein;

1. Admits each and all of the allegations of paragraphs 1, 2 and 3 of the further answer set forth and contained in said answer.

2. As to the allegations and matters set forth and contained in paragraph 4 of the further answer set forth and contained in said answer, this plaintiff denies that it has any knowledge or information thereof, or of any thereof, sufficient to form a belief.

3. As to the allegations and matters set forth and contained in paragraph 5 of the further answer set forth and contained in said answer, this plaintiff denies that it has any knowledge or information thereof, or of any thereof, sufficient to form a belief.

And for a further reply to the further answer set forth and contained in the defendant's answer, plaintiff alleges:

1. That on the 11th day of August, 1913, the plaintiff herein filed its complaint in the above entitled court against the defendant herein, a copy of which complaint is attached to the defendant's answer herein marked Exhibit "A" and made a part thereof.

2. That on the 25th day of August, 1913, the defendant filed its answer to said complaint, a copy of which answer is attached to the defendant's answer herein, marked Exhibit "E" and made a part thereof.

3. That issue was joined in said action and that

conclusions of law were made by the court therein, a copy of which conclusions of law is attached to defendant's answer herein, marked Exhibit "C" and made a part of said answer.

4. That thereafter, to-wit, on the 10th day of February, 1916, a judgment and decree was duly made and entered in said action, a copy of which said judgment and decree is attached to defendant's answer herein, marked Exhibit "D" and made a part thereof.

5. That said judgment still remains in full force and effect and stands un-appealed from.

6. Plaintiff further alleges that said defendant having appeared in said action and having filed its answer therein, wherein the defendant admitted that it had been grazing its sheep to the number of seven thousand one hundred upon the lands described in the complaint in said action and described in the complaint herein, and that the said defendant would continue so to do until restrained by an order of this court, the said defendant is now estopped from maintaining or asserting the defense set forth and contained in the further answer herein.

And for reply to the further defense set forth and contained in defendant's answer, this plaintiff;

1. Admits each and all of the allegations set forth and contained in paragraphs 1 and 2 of said further defense.

2. Denies each and every allegation and all al-

legations set forth and contained in paragraph 3 of said further defense.

3. Admits that issue was joined in said action; and admits that in said cause conclusions of law were made by said court, a copy of which conclusions of law is attached to said answer, marked Exhibit "C" and made a part thereof; but save and except as herein specifically admitted, this plaintiff denies each and every other allegation, and all other allegations, set forth and contained in paragraph 4 of said further defense.

4. Admits each and all of the allegations set forth and contained in paragraphs 5 and 6 of said further defense.

5. Denies each and every allegation and all allegations set forth and contained in paragraph 7 of said further defense.

WHEREFORE the plaintiff having fully replied, prays for judgment as in its complaint.

B. K. WHEELER,

United States Attorney, District of Montana.

HOMER G. MURPHY,

Assistant U. S. Attorney, District of Montana.

FRANK WOODY,

Assistant U. S. Attorney, District of Montana.

United States of America,

District of Montana,—ss.

FRANK WOODY, being first duly sworn upon oath, deposes and says that he is a duly appointed, qualified and acting Assistant United States Attorney for the district of Montana; that he has read

the foregoing reply and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

FRANK WOODY.

Subscribed and sworn to before me this 20th day of July, A. D. 1916.

[Seal]

GEO. W. SPROULE,
Clerk.

[Indorsed]: Title of Court and Cause. Reply.
Filed July 20, 1916. Geo. W. Sproule, Clerk.

And thereafter, on January 11th, 1917, the defendant filed in said court and cause its motion for judgment on the pleadings herein, which said motion is in words and figures following, to-wit:
In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Motion.

Now comes the defendant above named, and moves the court for judgment on the pleadings in its favor.

C. B. NOLAN,
WM. SCALLON,

Attorneys for Defendant.

[Indorsed]: Title of Court and Cause. Motion for Judgment on the Pleadings. Filed Jan. 11th,

1917. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy Clerk.

And said motion was thereupon argued to the court and by the court taken under consideration and the court thereafter, to-wit, on the 11th day of January, 1917, duly filed herein its opinion in writing, which is in words and figures following, to-wit:

United States District Court, Montana.

UNITED STATES

vs.

ASH SHEEP CO.

Defendant's motion for judgment on the pleadings, is granted.

The reasons therefor are set out in U. S. vs. Ash Sheep Co., 229 Fed. 480, Paragraph 2 at least.

In addition it may be observed that Congress first enacting the statute to include "horses or cattle" only, clearly understood those words were limited to equines in the limited sense, and bovines. For later, it amended or re-enacted the statute to embrace "mules," a variety of equines.

Here is proof of it. Not only did Congress not intend "cattle" to embrace more than bovines, but so literally did it intend "horses" or cattle," that although "horses" may import all equines and so, mules, it re-enacted the statute to include mules by express declaration.

Both horses and cattle, in their broad interpretation, include mules. Used in their narrower sense, neither included mules. Hence, the re-en-

actment to specify mules. Hence, also, is demonstrated that "horses, mules or cattle" in the reenactment import the same literal or narrow sense and does not include sheep.

Penal laws, and Mischief, see—

U. S. v. Sheldon, 2 Wheat 119.

[Indorsed]: Title of Court and Cause. Memo. Filed Jan. 11, 1917. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy.

And thereafter, on January 24th, 1917, judgment was duly rendered and entered herein in the words and figures following, to-wit:

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Judgment.

In this action on the 11th day of January, 1917, the above cause came on to be heard on a motion for judgment on the pleadings filed by the defendant in said action, and upon due consideration of same by the court, the said motion was by the court sustained, and it was ordered and adjudged by the court that on the pleadings in said action the defendant was entitled to a judgment in its favor.

WHEREFORE by reason of the law and the premises aforesaid;

IT IS ORDERED, ADJUDGED and DECREED that the plaintiff in said action do recover nothing against the defendant by reason of said action.

DATED and entered this 24th day of January, 1917.

GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy.

Attest a true copy.

GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy.

[SEAL]

And thereafter, on July 10, 1917, petition for a writ of error was duly filed herein, being in the words and figures following, to-wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Petition for Writ of Error.

To the Honorable George M. Bourquin, Judge of the District Court aforesaid:

The United States of America, plaintiff above named, conceiving itself aggrieved by the judgment rendered and entered in the above entitled cause in the District Court of the United States for

the District of Montana, on the 24th day of January, A. D. 1917, the said judgment being the final and only judgment entered in said cause, and complaining that in the record and proceedings had in said cause, and also in the rendition and entry of said judgment, manifest error hath occurred to the great damage of the said plaintiff, as more fully appears from the assignment of errors which is filed with this petition, comes now and petitions the above entitled court for an order allowing said plaintiff to prosecute a writ of error out of the United States Circuit Court of Appeals in and for the Ninth Circuit, and that such writ of error may issue out of the said United States Circuit court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to said Circuit Court of Appeals, under and according to the laws of the United States, in that behalf made and provided, and for such other and further order as to the court may seem just.

BURTON K. WHEELER,

United States Attorney, District of Montana.

The foregoing petition is granted and a writ of error is allowed to the United States of America.

Dated Helena, Montana, July 10th, 1917.

BOURQUIN, Judge.

[Indorsed]: Title of Court and Cause. Petition for Writ of Error. Filed July 10, 1917. Geo. W. Sproule, Clerk.

And thereafter, on July 10, 1917, plaintiff filed its assignments of error herein, which are in the words and figures following, to-wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Assignment of Errors.

And now, on this 10th day of July, 1917, come the plaintiff above named, by Burton K. Wheeler, United States Attorney for the District of Montana, its attorney, and says that the judgment made and entered in the above entitled cause on the 24th day of January, 1917, is erroneous and unjust to plaintiff:

First: Because the court erred in finding that sheep are not animals within the provisions of Section 2117 of the Revised Statutes of the United States;

Second: Because the court erred in finding that sheep are not cattle within the provisions of Section 2117 of the Revised Statutes of the United States;

Third: Because the court erred in finding that sheep are not stock within the meaning of Section 2117 of the Revised Statutes of the United States for which a person who drives or otherwise conveys them to range and feed on any land belong-

ing to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of one dollar for each animal of such stock;

Fourth: Because the court erred in refusing to find that sheep are cattle within the meaning of the provisions 2117 of the Revised Statutes of the United States;

Fifth: Because the court erred in refusing to find that sheep are animals within the meaning of the provisions of Section 2117 of the Revised Statutes of the United States.

Sixth: Because the court erred in refusing to find that sheep are stock within the meaning of Section 2117 of the Revised Statutes of the United States for which a person who drives or otherwise conveys them to range and feed on any land belonging to any Indian or Indian Tribe, without the consent of such Tribe, is liable to a penalty of one dollar for each animal of such stock.

Seventh: Because the court erred in granting the motion for judgment on the pleadings made by the defendant above named;

Eighth: Because the court erred in holding that under the pleadings herein the defendant was entitled to judgment in favor of said defendant and against said plaintiff;

Ninth: Because the court erred in rendering judgment herein in favor of the defendant and against the said plaintiff;

Tenth: Because the court erred in entering

herein a judgment in favor of said defendant and against said plaintiff.

WHEREFORE plaintiff prays that said judgment be reversed and said district court be directed to enter a judgment herein in favor of said plaintiff and against said defendant as prayed for in the complaint of plaintiff, and such other and further relief as to the court may seem proper.

BURTON K. WHEELER,

United States Attorney, District of Montana.

[Indorsed]: Title of Court and Cause. Assignments of Error. Filed July 10, 1917. Geo. W. Sproule, Clerk.

And thereafter, on July 10, 1917, a Writ of Error was duly issued herein, which is in the words and figures following, to-wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States of America, to the HONORABLE GEORGE M. BOURQUIN, Judge United States District Court for the District of Montana, and to the District Court of the United States for the District of Montana:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in said District Court, before you, between the United States of America plaintiff, and Ash Sheep Company, a corporation, defendant, manifest error hath occurred and happened to the said plaintiff, United States of America, as by its petition for a writ of error and assignment of errors appears, we, being willing that such error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you if judgment be therein given that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date of this writ in said Circuit Court of Appeals, to be then and there held, that, the records and proceedings aforesaid, being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable Edward D. White, Chief Justice of the United States Supreme Court this 10th day of July, A. D. 1917, and of the Inde-

pendence of the United States the one hundred and forty one.

[Court Seal] GEO. W. SPROULE,
Clerk District Court of the United States, District
of Montana.

Due personal service of the foregoing writ of error made and admitted and receipt of a copy thereof acknowledged this 10th day of July, A. D. 1917.

C. B. NOLAN,
Attorney for Defendant, Ash Sheep Company.
[Indorsed]: Title of Court and Cause. Writ
of Error. Filed July 11, 1917. Geo. W. Sproule,
Clerk.

And thereafter, on July 10, 1917, a citation was duly issued herein, which is hereto attached and is in words and figures following, to-wit:

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA.

Plaintiff,

VS.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Citation.

United States of America,—ss.

United States of America to the above named defendant, Ash Sheep Company, and C. B. Nolan and William Scallon, its attorneys: GREETING:

You are hereby notified that in a certain cause

wherein the United States of America is plaintiff and the Ash Sheep Company is defendant pending in the District Court of the United States for the District of Montana a writ of error has been allowed and granted to said plaintiff to the Circuit Court of Appeals of the United States for the Ninth Circuit. You are hereby cited and admonished to be and appear in said Circuit Court of Appeals at the city of San Francisco in the State of California, within said Ninth Circuit, thirty days after the date of this citation, to show cause, if any there be, pursuant to said writ of error, why the judgment made and entered in said cause in said District Court should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable George M. Bourquin, Judge of the District Court of the United States for the District of Montana, this 10th day of July, 1917.

BOURQUIN,
Judge.

Service of a copy of the within citation and receipt of a copy thereof this 10th day of July, 1917, is hereby admitted and acknowledged.

C. B. NOLAN,
Attorney for Defendant.

[Indorsed]: Title of Court and Cause. Citation. Filed July 11, 1917. Geo. W. Sproule, Clerk.

And thereafter, on July 25th, 1917, plaintiff duly served and filed herein its praecipe for transcript

of record, which is in words and figures following:

UNITED STATES OF AMERICA,

Plaintiff and Plaintiff in Error,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant and Defendant in Error.

NO. 506.

Praeipice for Transcript of Record.

To Messrs. C. B. Nolan and William Scallon, attorneys for the above named defendant and defendant in error, and George W. Sproule, clerk of said court:

You, and each of you, will please take notice that the undersigned, the attorney for the plaintiff and plaintiff in error above named, hereby serves upon you and each of you this praeipice in conformity with the rules of court, to indicate to you the portions of the records and files in the above entitled cause which said plaintiff and plaintiff in error desires to and will incorporate in its transcript of record on writ of herein, to-wit, the writ of error issued herein on the 9th day of July, 1917, to have the judgment hereinbefore rendered and entered herein reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, and the clerk of said District Court will incorporate and include in said transcript the following:

1. The judgment roll or final record in said cause consisting of the complaint, summons, demurrer to complaint, answer, demurrer to answer,

reply, motion for judgment on pleadings, decision of court and judgment;

2. Order granting leave to withdraw demurrer to complaint, and leave to file answer;

3. Order overruling demurrer to answer.

4. Petition for writ of error and order allowing same.

5. Assignment of errors filed with petition for writ of error.

6. Writ of error.

7. Citation on writ of error and acknowledgment of service by defendant.

8. Order extending time for completing and transmitting the record on writ of error herein to the United States Circuit Court of Appeals for the Ninth Circuit.

9. Copy of this praecipe.

BURTON K. WHEELER,

United States Attorney, District of Montana.

Service of the foregoing praecipe and receipt of a copy thereof this 25th day of July, 1917, is hereby admitted and acknowledged.

C. B. NOLAN,

WM. SCALLON,

Attorneys for Defendant Ash Sheep Company.

[Indorsed]: Title of Court and Cause. Praecipe for Record. Filed July 25, 1917. Geo. W. Sproule, Clerk.

And thereafter, on July 25, 1917, the said district court duly made and entered its order herein ex-

tending the time within which to prepare and have certified to said Circuit Court of Appeals of the United States for the Ninth Circuit the record on writ of error herein, which is in words and figures following, to-wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

**Order Extending Time to Prepare Record on
Writ of Error.**

Upon good cause shown, it is hereby ordered that the above named plaintiff who has heretofore sued out a writ of error from the Circuit Court of Appeals of the United States for the Ninth Circuit, may have thirty days in addition to the time allowed by the rules of court within which to have prepared and certified up to the said Circuit Court of Appeals the record on the writ of error herein.

Dated this 25th day of July, 1917.

BOURQUIN,

Judge.

And thereafter, on August 28, 1917, the said district court duly made and entered its order herein extending the time within which to prepare and have certified to said Circuit Court of Appeals of the United States for the Ninth Circuit the record

on writ of error herein, which is in words and figures to-wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Order Extending Time to Prepare Record on Writ of Error.

Upon good cause shown it is hereby ordered that the above-named plaintiff who has heretofore sued out a writ of error from the Circuit Court of Appeals of the United States for the Ninth Circuit, may have fifteen days in addition to the time allowed by the rules of the said Circuit Court of Appeals and the extension of time heretofore given by the order of this court made and entered on the 25th day of July, 1917, within which to have prepared and certified up to the said Circuit Court of Appeals the record on the writ of error herein.

Dated August 28, 1917.

BOURQUIN, Judge.

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASH SHEEP COMPANY,

Defendant.

Order Extending Time to Prepare Record on Appeal.

Upon good cause shown it is hereby ordered that the above named plaintiff who has heretofore sued out a writ of error from the Circuit Court of Appeals of the United States for the Ninth Circuit, may have twenty days in addition to the time allowed by the rules of said Circuit Court of Appeals and the extensions of time for such purpose heretofore given by orders of this court herein duly entered, within which to have prepared and certified up to said Circuit Court of Appeals the record on the writ of error herein.

Dated September 17th, 1917.

BOURQUIN,
Judge.

Clerk's Certificate to Transcript of Record,
United States of America,
District of Montana,—ss.

I, George W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 53 pages, numbered consecutively from 1 to 53, both inclusive, is a true and correct transcript of all pleadings, process, order, decree, decision, and all of proceedings in said cause required to be in-

corporated in the record on writ of error by the praecipe of plaintiff in error for said record, and consists of full, true, correct and complete copies of the complaint, demurrer to complaint, order allowing withdrawal of said demurrer and filing of answer, answer, demurrer to answer, order overruling demurrer to answer, reply, motion for judgment on pleadings, decision of court, judgment, petition for writ of error and order allowing same, assignment of errors, writ of error, citation, praecipe for record, orders extending time within which to file transcript of record in said Circuit Court of Appeals, and of the whole thereof as the same appear from the original records and files of said court in my possession as such clerk; and I do further certify and return that I have annexed to said transcript and included within the paging thereof the original writ of error and citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Twenty 45/100 Dollars and have been made a charge against plaintiff in error.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at Helena, Montana, this 5th day of October, A. D. 1917.

[Seal]

Geo W Sproule
Clerk.

